

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

BALBOA CAPITAL CORPORATION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. 3:18-cv-01952-M
	§	
OSTROWSKY HOME VISITS MHT LLC, et	§	(Consolidated with Civil Action No. 3:18-
al.,	§	cv-00898-M (Lead Case))
	§	
Defendants.	§	
	§	

**MEMORANDUM ORDER**

On July 27, 2018, Plaintiff Balboa Capital Corporation filed suit against Defendants Avi Ostrowsky, Ostrowsky Home Visits MHT LLC, and Ostrowsky MD Ltd. ECF No. 1.<sup>1</sup> This case was subsequently consolidated for pretrial with other cases brought by Plaintiff Balboa Capital Corporation. *See Balboa Capital Corp. v. Okoji Home Visits MHT LLC, et al.* (“Lead Case”), Case No. 3:18-cv-898 (N.D. Tex. Apr. 11, 2018).

On January 28, 2019, Plaintiff filed its First Amended Complaint. ECF No. 25. On February 18, 2019, Defendants Avi Ostrowsky, Ostrowsky Home Visits MHT LLC, and Ostrowsky MD Ltd. answered the First Amended Complaint. Lead Case, ECF No. 97.<sup>2</sup>

On October 28, 2019, Defendants’ prior counsel, the law firm of Ferguson Braswell Fraser Kubasta PC, filed an Unopposed Motion to Withdraw for want of payment. ECF No. 17. That same day, the Magistrate Judge ordered Defendants to respond to the Motion to Withdraw by November 11, 2019. ECF No. 19. The docket reflects that on November 2, 2019, the

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<sup>1</sup> Unless otherwise noted, references to the docket are to the docket in Case No. 3:18-cv-01952.

<sup>2</sup> Despite the Court’s instruction that “[a]ll pretrial filings will be made in the lead case and in the individual case to which the matter relates,” *see* Lead Case, ECF No. 43, Defendants appear to have filed their Answer to the First Amended Complaint solely in the lead case.

Magistrate Judge's Order directing a response was served, but no response was filed. *See* ECF No. 24.

On November 8, 2019, while the Motion to Withdraw was pending, Plaintiff filed the Second Amended Complaint against Defendants. ECF No. 20. Defendants did not answer or otherwise respond to the Second Amended Complaint. The docket reflects that, beginning on November 12, 2019, mail sent to the address listed on the docket for Ostrowsky, M.D., Ltd. was consistently returned as undeliverable. ECF Nos. 27, 28, 31, 35, 43, 44, 61, 62, 65. However, there is no indication that the Second Amended Complaint was not served on Ostrowsky, M.D., Ltd.

On November 15, 2019, Order, the Court granted the Motion to Withdraw. Because an artificial entity may not represent itself *pro se*, the Court ordered Ostrowsky Home Visits MHT LLC and Ostrowsky, M.D., Ltd. to appear through licensed counsel or sanctions may be imposed. ECF No. 25. The docket reflects that the Court's November 15, 2019, Order was sent to the address listed for Ostrowsky, M.D., Ltd. but was returned as undeliverable. ECF Nos. 27, 28.

On August 21, 2020, Plaintiff filed the Third Amended Complaint. ECF No. 20. Defendants did not answer or otherwise respond to the Third Amended Complaint. Indeed, Defendants have not affirmatively participated in this case, either by filing documents or responding to pleadings, since prior to the Court's November 15, 2019, Order granting withdrawal of Defendants' prior counsel.

Defendants Ostrowsky Home Visits MHT LLC and Ostrowsky, M.D., Ltd. remain unrepresented by counsel, and thus failed to comply with the Court's November 15, 2019, Order. These artificial entities cannot continue to proceed unrepresented in this case, especially after

this Court warned that failure to hire new counsel could result in sanctions, including potentially the entry of a default judgment. *Id.* at 2–3. Here, the Court has considered lesser sanctions, but finds that sanctions short of entering a default would not serve the interests of justice or advance the disposition of this case on the merits. The record in this case establishes that Defendants Ostrowsky Home Visits MHT LLC and Ostrowsky, M.D., Ltd. failed to plead or otherwise defend against Plaintiff’s claims since the withdrawal of counsel, despite having over two years to find substitute counsel.

The Court notes that the docket indicates mail to Defendant Ostrowsky, M.D., Ltd. has been returned as undeliverable, but concludes that default is still appropriate. Having appeared in the lawsuit by filing an answer to the First Amended Complaint, Ostrowsky, M.D., Ltd. had an ongoing obligation to apprise the Court of any change in address.

Moreover, a party is entitled to entry of a default by the clerk of the court if the opposing party fails to plead or otherwise defend as required by law. *See* Fed. R. Civ. P. 55(a). A party defaults when he fails to file an answer within the allowed time. *New York Life Ins. Co. v. Brown*, 84 F.3d 137, 141 (5th Cir. 1996). Here, all Defendants, including Ostrowsky, M.D., Ltd., were served the Second Amended Complaint while still represented by counsel, yet did not file a response within the allotted time. Like the two artificial entity Defendants, Defendant Avi Ostrowsky, an individual, has failed to answer or otherwise respond to the Second Amended Complaint, the Third Amended Complaint, as well as Plaintiff’s Motion for Summary Judgment, and all of the Court’s deadlines to do so have expired.

Under proper circumstances, the Court has the authority to enter *sua sponte* default judgment for failure to comply with its orders or rules of procedure. *Flaksa v. Little River Marine Const. Co.*, 389 F.2d 885, 887 (5th Cir. 1968). Accordingly, the Court finds that

Defendants Avi Ostrowsky, Ostrowsky Home Visits MHT LLC, and Ostrowsky M.D. Ltd. are in default. The Clerk of Court is directed, pursuant to Federal Rule of Civil Procedure 55(a), to enter default against Defendants Avi Ostrowsky, Ostrowsky Home Visits MHT LLC and Ostrowsky, M.D., Ltd. Plaintiff is directed to move, by no later than January 5, 2021, for default judgment against Defendants.

The Clerk of Court is further directed to serve a copy of this Memorandum Order on Defendants Avi Ostrowsky, Ostrowsky Home Visits MHT LLC, and Ostrowsky M.D. Ltd. via certified mail, return receipt requested, at the following addresses:

**Avi Ostrowsky**  
**Ostrowsky Home Visits MHT LLC**  
**Ostrowsky MD Ltd.**  
c/o Philip T Varricchio  
3273 East Warm Springs Road  
Las Vegas, NV 89120

**Avi Ostrowsky**  
**Ostrowsky Home Visits MHT LLC**  
**Ostrowsky MD Ltd.**  
2911 N Tenaya Way  
Suite 104  
Las Vegas, NV 89128-0464

**Avi Ostrowsky**  
**Ostrowsky Home Visits MHT LLC**  
**Ostrowsky MD Ltd.**  
6140 Galileo Drive  
Las Vegas, NV 89149-1386

**SO ORDERED.**

December 10, 2021.

  
BARBARA M. G. LYNN  
CHIEF JUDGE